

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. CR 05-00427 JSW

v.

RONALD DUNCAN,

Defendant.

**ORDER DENYING WITHOUT
PREJUDICE EX PARTE
APPLICATION**

On October 7, 2005, Defendant submitted an ex parte application and declaration in support of order authorizing an indigent subpoena under Federal Rule of Criminal Procedure 17(b) and (c).

A party seeking the production of documents, prior to trial, by way of a subpoena issued pursuant to Rule 17(c) must demonstrate: “(1) that the documents are evidentiary and relevant; (2) that they are not otherwise procurable reasonably in advance of trial of due diligence; (3) that the party cannot properly prepare for trial without such production and inspection in advance of trial and that the failure to obtain such inspection may tend unreasonably to delay the trial; and (4) that the application is made in good faith and is not intended as a general ‘fishing expedition.’” *United States v. Nixon*, 418 U.S. 683, 699-700 (1974). However, a party cannot make this showing merely by way of conclusory allegations regarding the relevance and admissibility of the documents. *United States v. Eden*, 659 F.2d 1376, 1381 (9th Cir. 1981).

Having reviewed the application and accompanying declaration submitted by defense counsel in support of the subpoena, the Court concludes that Defendant has not made a sufficient showing under *Nixon* to justify issuance of the subpoena. This ruling is without

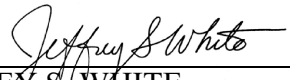
1 prejudice to a renewed application in which Defendant presents a sufficient showing under the
2 standard set forth in *Nixon*, and in particular as to the fourth prong because it appears to the
3 Court that the request is overly broad.

4 Accordingly, the *ex parte* application is DENIED WITHOUT PREJUDICE. The Court,
5 however, GRANTS the request to file that application and the declaration under seal. *See, e.g.,*
6 *U.S. v. Tomison*, 969 F. Supp. 587 (E.D. Cal. 1997). Because this is an e-filing case, Defendant
7 shall file a notice of manual filing of the *ex parte* application and declaration. Any renewed
8 application also may be submitted to the Court on an *ex parte* basis and under seal, but must be
9 accompanied by a notice of manual filing.

10 **IT IS SO ORDERED.**

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12 Dated: October 12, 2005

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JEFFREY S. WHITE
UNITED STATES DISTRICT JUDGE